

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

**May 21, 2024**

SEAN F. MCAVOY, CLERK

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON**

Joseph William Hart,

Petitioner,

v.

Washington State Department of  
Corrections, et al.,

Respondents.

2:24-cv-00131-SMM

**ORDER DISMISSING PETITION**

Self-represented Petitioner Joseph William Hart, who is confined in the Airway Heights Corrections Center, filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 (ECF Doc. 1) and paid the filing fee. The Court will **DISMISS** the Petition and this action.

**I. Petition**

Petitioner pleaded guilty and was convicted in 2004 in Spokane County Superior Court, case #041016356, of attempted first-degree robbery. He was sentenced to 46 months in prison.

In his Petition, Petitioner raises four grounds for relief. In Ground One, Petitioner contends he received ineffective assistance of counsel because his “court appointed defense attorney” was not present at his arraignment and Petitioner had to represent himself at the arraignment. In Ground Two, he asserts the court proceedings were unconstitutional because he was unable to defend himself “due to diminished capacity resulting from mental illness.” In Ground Three, he alleges “Jason E. Smith committed a crime on [Petitioner]

1 and falsif[ied] his statements[,] taking advantage of [Petitioner's] diminished capacity." In  
 2 Ground Four, Petitioner claims the "crime that [he] was prosecuted for was the result of a  
 3 series of organized mixed crime by the same people in the case."

## 4 **II. Discussion**

5 A district court must summarily dismiss a § 2254 petition "[i]f it plainly appears  
 6 from the petition and any attached exhibits that the petitioner is not entitled to relief in the  
 7 district court." Rule 4, Rules Governing Section 2254 Cases in the United States District  
 8 Courts. In this case, summary dismissal is warranted because Petitioner cannot attack his  
 9 attempted robbery conviction directly or collaterally.

### 10 **A. Petitioner cannot attack his conviction directly**

11 Pursuant to § 2254(a), a district court "shall entertain an application for a writ of  
 12 habeas corpus [o]n behalf of a person in custody pursuant to the judgment of a State court  
 13 only on the ground that he is in custody in violation of the Constitution or laws or treaties  
 14 of the United States." The "in custody" requirement means that federal courts lack  
 15 jurisdiction unless the petitioner is "under the conviction or sentence under attack at the  
 16 time his petition is filed." *Maleng v. Cook*, 490 U.S. 488, 490-91 (1989). Petitioner is not  
 17 in custody under the attempted robbery conviction, he has fully served the 46-month  
 18 sentence imposed two decades ago. *See* ECF Doc. 1 at 14 ("S[ince] I have finished serving  
 19 my time[,] I have become incarcerated again.")

### 20 **B. Petitioner cannot attack his conviction collaterally**

21 The "in custody" requirement is satisfied a petitioner is challenging the validity of  
 22 an expired state conviction that was used to enhance his current sentence. *Lackawanna*  
 23 *Cnty. Dist. Att'y v. Coss*, 532 U.S. 394, 401-02 (2001). Petitioner's expired attempted  
 24 robbery conviction was used as "strike" when Petitioner was sentenced as a persistent  
 25 offender in Franklin County Superior Court case #121501172. *See State v. Hart*, 353 P.3d  
 26 253, 255 ¶ 2 (Wash. Ct. App. 2015) ("Because Mr. Hart had two prior 'most serious  
 27 offense' convictions including one for attempted first degree robbery at age 20 and one for  
 28 second degree assault at age 22, the trial court sentenced him under the [Persistent Offender

1 Accountability Act] to life without the possibility of release . . . .”). Thus, the Petition,  
2 “construed with the deference to which *pro se* litigants are entitled,” can be read as  
3 asserting a challenge to the sentence in case #121501172, “as enhanced by the allegedly  
4 invalid prior conviction.” *Dubrin v. Cal.*, 720 F.3d 1095, 1097 (9th Cir. 2013) (quoting  
5 *Maleng*, 490 U.S. at 493).

6 Even though the “in custody” requirement may be satisfied, “when an ‘expired’  
7 prior conviction . . . is later used to enhance a criminal sentence, a state prisoner ‘generally  
8 may not challenge the enhanced sentence through a petition under § 2254 on the ground  
9 that the prior conviction was unconstitutionally obtained.’” *Id.* (quoting *Lackawanna*, 532  
10 U.S. at 403-04). Although there are exceptions to this general rule, discussed below,  
11 Petitioner does not qualify for them.

12 The Supreme Court has recognized an exception to *Lackawanna* when there was a  
13 failure to appoint counsel in the expired conviction, in violation of the Sixth Amendment.  
14 *Lackawanna*, 532 U.S. at 404. However, in Petitioner’s attempted robbery case, the court  
15 appointed counsel. Although Petitioner contends appointed counsel was not present at the  
16 arraignment, Petitioner does not allege he was denied counsel at other stages in the  
17 attempted robbery proceedings. To the contrary, he alleges he was represented by counsel  
18 at the plea and sentencing stages of the attempted robbery proceedings. *See* ECF Doc. 1  
19 at 13. The attorney’s failure to attend the arraignment does not constitute an exception to  
20 *Lackawanna*. *See Davis v. Roberts*, 425 F.3d 830, 835 (10th Cir. 2005) (“prisoners are not  
21 entitled to an exception on the ground that their counsel provided inadequate  
22 representation”); *see also Lackawanna*, 532 U.S. at 404 (“the ‘failure to appoint counsel  
23 for an indigent [is] a unique constitutional defect . . . ris[ing] to the level of a jurisdictional  
24 defect,’ which therefore warrants special treatment among alleged constitutional  
25 violations.” (quoting *Custis v. United States*, 511 U.S. 485, 496 (1994))).

26 Additional exceptions to *Lackawanna* exist where the petitioner cannot be faulted  
27 for failing to obtain a timely review of a constitutional claim because a state court, “without  
28 justification, refuse[s] to rule on a constitutional claim that has been properly presented to

it,” or where the petitioner has, “after the time for direct or collateral review has expired,” obtained “compelling evidence” that he is “actually innocent of the crime for which he was convicted, and which he could not have uncovered in a timely manner.” *Lackawanna*, 532 U.S. at 405; *see also Dubrin*, 720 F.3d at 1098. Petitioner does not argue these exceptions apply; does not allege a state court refused, without justification, to rule on a properly presented constitutional claim;<sup>1</sup> and presents no evidence, compelling or otherwise, that he is actually innocent.

**IT IS ORDERED:**

(1) Petitioner’s Petition for Habeas Corpus (ECF Doc. 1) and this case are **dismissed**.

(2) The District Court Clerk is directed to enter this Order, enter Judgment, and close this case.

(3) The District Court Clerk is directed to provide a copy of this Order and the Judgment to Petitioner.

....

....

....

....

....

....

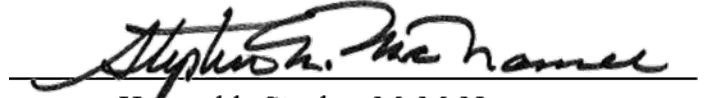
....

---

<sup>1</sup> Petitioner asserts his “circumstance of misfortune,” “unstable mental conditions,” and “diminished capacity” are the reason he never, over the course of nearly two decades, pursued his state court remedies regarding his attempted robbery conviction. Although Petitioner is “a paranoid schizophrenic who suffers from antisocial personality disorder,” *Hart*, 353 P.3d at 255 ¶ 2, his allegations are insufficient to meet his burden of demonstrating entitlement to equitable tolling. *See Rudin v. Myles*, 781 F.3d 1043, 1055 (9th Cir. 2015) (a petitioner “bears a heavy burden” to show entitlement to equitable tolling); *Bills v. Clark*, 628 F.3d 1092, 1099-1101 (9th Cir. 2010) (setting forth requirements for entitlement to equitable tolling based on mental impairment).

1 (4) Pursuant to Rule 11(a) of the Rules Governing Section 2254 Cases, in the  
2 event Petitioner files an appeal, the Court declines to issue a certificate of appealability  
3 because reasonable jurists would not find the Court's procedural ruling debatable. *See*  
4 *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

5 Dated this 21st day of May, 2024.

6  
7 

8 Honorable Stephen M. McNamee  
9 Senior United States District Judge  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28